For Mysore 1953

Home Dept

Memo 95930 Cts III/53-1
Dated 12 6 53

FOR MYSORE STATE

GOVERNMENT OF MADRAS
Home Department

Memorandum No.93930 Courts III/53-1 dated 12-6-1953.

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Arbitration Proceedings - Filing of awards etc.- Procedure - Instructions.

A copy of letter No.5345, dated 4-5-1953 from the Government Pleader, Madras together with its enclosures on the subject referred to above is communicated to all Heads of Departments for information and guidance.

G. GOPALAKRISHNA NAIDU,
Deputy Secretary to Government.

To All heads of Departments.
The Government Pleader, Madras.
The Advocate General, Madras.
Copy to the Legal Department.
" Development Department.
" Revenue Department.
" All other Departments of the Secretariat (including Home) with spare copies.

Forwarded/By Order.

SUPERINTENDENT

SRB/15-6.

Copy of letter No.5345, dated 4-5-1953 from the Government Pleader, Madras to the Secretary to Government, Home Department, Madras.

Frequent enquiries are being received from Heads of Departments and other Public Offices asking us to inform them as to the procedure to be followed for filing of awards in Arbitration Proceedings and other incidental matters. The learned Advocate-General has prepared the accompanying note which briefly gives the information which is necessary in relation to the procedure. I request that the note appended hereto may be circulated to all Heads of Departments for their information.

ARBITRATION PROCEEDINGS - PROCEDURE FOR FILING AWARD.

1. There are numerous cases in which Government or a public officer is a party to arbitration proceedings. In some instances the Arbitrator is himself a public officer and in others a person agreed upon between the parties. Difficulty has been felt in the filing of the Awards into Court and obtaining a judgment in terms of the Award. The cases in which the State would be applying to set aside an Award must be very few, but even in such cases the proceedings can be taken only after the Award is filed and notice thereof is received.

2. Under the Arbitration Act, 1940 it is incumbent that the Award should be filed in Court under Section 14 and a judgment pronounced under section 17. Unless this is done the Award cannot be relied upon. Under section 14(1) the Arbitrator must give notice of the making of the Award. Under section 14(2) the Arbitrator shall cause the Award to be filed in Court (a) at the request of any party or (b) if so directed by the Court. Then the Court will pronounce judgment in terms of the Award under section 17 after the time for filing an application for setting aside the Award has expired. The

P.T.O.

The provisions of the Indian Limitation Act applicable to this are as follows:-

	Period of limitation.	Time from which period begins to run.
Article 158:		
Under the Arbitration Act 1940 to set aside an award or to get an award remitted for reconsideration.	30 days.	The date of service of the notice of filing the award.
Article 178:		
Under the Arbitration Act 1940 for the filing in Court of an award.	90 days.	The date of service of the making of the award.

3. The Courts have framed rules under the Arbitration Act. With regard to the mofussil Courts it is contained in Chapter 14 of Volume I Part II of the Civil Rules of Practice. The only thing to specially note in this is that the Arbitrator has to file a regular pe petition with various enclosures. With regard to the Original Side of the High Court, the rules are contained in Order 38 of the Original Side Rules and the proceedings are a bit more complicated. The relevant rule is Rule 5 which is as follows:-

5. Filing of Award:

> The Arbitration or Umpire shall cause the Award or a signed copy thereof (duly stamped) to be filedin Court under section 14(2) of the Act, together with any deposition and documents which have been taken and proved before him, by a petition with necessary court-fees. A list of the above documents and depositions with description and date shall be annexed to the petition. He shall also file together with the petition, a copy of the notice issued to the parties concerned with an affidavit of service of such notice and as many as sets as there are parties to be served in the latter of notices (In duplicate) of the filing of the award in Court (Form No.125-A).

4. A lot of confusion has arisen in the construction of these provisions of law. Quite a number of decisions have been referred to starting with I.L.R.1946 Bom.113 and the fullest discussion is in A.I.R. 1951 Nag. 32. The result is that the Courts have held that Article 178 is applicable to the application of a party to the application of a party to the Court to direct the Arbitrator to file an Award. They have held that the Article does not at all apply when the Arbitrator himself files the Award. The result is that if the party does not apply to Court within 90 days of notice to direct the Arbitrator to file the Award, there is no other method of enforcing the duty of the Arbitrator to file the Award at the request of the party. The Madras High Court has also held in a proceeding relating to Article 158 in 1953) 66 L.W.11 that section 5 of the Arbitration Act does not apply to proceedings in Court and under the Arbitration Act therefore the Court cannot excuse the delay. In these circumstances the only safe course is to take prompt steps. The suggestions are as follows:-

(1) In every arbitration to which the Government or an officer is a party an application may be made in writing at the conclusion of the hearing requesting the Arbitrator to file the Award (when made) into Court under section 14(2) and offering to pay the costs and charges of filing the award. If the Arbitrator mentions the figure the amount ~~may~~ may be deposited with him. In the same application the designation and address of the officer to whom the notice of making the Award has to be sent may be given as otherwise the notice goes to some other ~~off~~ officer and there is delay in the proper person getting the notice.

(2) As soon as the notice of the making of the award is received the officer may endorse the date on which it was received on the notice.

(3) Immediately thereafter the officer should contact the Arbitrator and arrange for the filing of the Award. If the Arbitrator engages his own Advocate the charges must be paid. If on the other hand he is willing to take legal assistance by the Government Pleader of the District concerned, it may be done that way.

(4) If the filing by the Arbitrator under the above arrangement is delayed till one month from the date of the receipt of notice the Government Pleader may be immediately instructed to file a petition under Section 14(2) to direct the Arbitrator to file the Award into Court.

(6) If the Arbitrator is himself a public officer the request may be formally made to him to file the Award and immediately the Government Pleader may be contacted for filing the Award with a petition by the Arbitrator. In such cases the necessity of one petition to direct the Arbitrator to file it and another petition by the Arbitrator to file it can be avoided.

5. Instances in which the State would wish to have Awards set aside on the grounds mentioned in section 30 of the Act may be few but if there are any such grounds they may be brought to the notice of the Government Pleader at the earliest opportunity but not later than the one month referred to above. The application itself will be made after the Award is filed into Court which must be first attended to.

6. Stamp on the Award: The Award has to be duly stamped under the Indian Stamp Act before it is filed by the Arbitrator. The stamp duty on the Award is given below as there are numerous enquiries on this matter. Under Article 11 of Schedule I.A the duties have been doubled by Madras Act XVI of 1943 as follows:-

12. Award:

(a) Where the amount or value does not exceed Rs.1,000 - the same duty as a Bottomry Bond*

		Rs.	A.	P.
* Where the amount does not exceed Rs.10.		0	6	0
Where it exceeds Rs.10 but does not exceed Rs. 50		0	12	0
do	Rs.50 - Rs. 100	1	8	0
do	Rs.100 - Rs. 200	3	0	0
do	Rs.200 - Rs. 300	4	8	0
do	Rs.300 - Rs. 400	6	0	0
do	Rs.400 - Rs. 500	7	8	0
do	Rs.500 - Rs. 600	9	0	0
do	Rs.600 - Rs. 700	10	8	0
do	Rs.700 - Rs. 800	12	0	0
do	Rs.800 - Rs. 900	13	8	0
do	Rs.900 - Rs.1000	15	0	0

(b) if it exceeds Rs.1000 but does not exceed Rs.5000/- 20 0 0

and for every additional Rs.1000 or part thereof in excess of Rs.5000. 1 0 0

Subject to a maximum of Rs.100

Sd. xxxx
GOVERNMENT PLEADER.

4th May 1953.

/ True copy / R Sundaram

SUPERINTENDENT.

SRB/